

No. 12,923

IN THE

United States Court of Appeals
For the Ninth Circuit

JEWELL JAMES WILLIAMS,

Appellant,

vs.

E. B. SWOPE, Warden, United States
Penitentiary, Alcatraz, California.

Appellee.

APPELLANT'S REPLY BRIEF.

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APPELLANT'S REPLY BRIEF.

Appellee's answering brief cites no authority nor, in any way, answers the specific questions raised by appellant in the pending appeal. Appellee relies solely upon the findings of fact in the court below.

The evidence below on points raised by appellant, consisting entirely of the records (transcripts) of proceedings before the respective courts whose jurisdiction is now questioned, is before this court as it was before the court below.

These records, now before this court, show on their faces that jurisdictional rights of appellant were violated, and the findings of the court below are, therefore, unsupported by evidence, and contrary to law for the reasons set forth in appellant's opening brief.

WHERE EVIDENCE IS ENTIRELY DOCUMENTARY THE REVIEWING COURT WILL EXAMINE THE RECORD AND MAKE FINDINGS, INDEPENDENT OF THE TRIAL COURT.

Appellee contends that the findings of the trial court bind this court. This is not the law. Even if the records did present an issue of fact which could be decided either way, the rule is that where evidence is all documentary the reviewing court will make an original examination of the evidence as contained in the record and decide the question of fact (if such there be) independent of the trial court's findings; the view being taken that, under these circumstances, the appellate court is as competent as the trial court to form a just estimate of the credence to be given to the testimony, and also has more time to give to the examination of the case. (California, contra.)

Nashua Mfg. Co. v. Berenzweig, 39 F. (2d) 896;

Munro v. Smith, 259 Fed. 1.

This rule applies in criminal cases.

United States v. Johnson, 149 F. (2d) 31, 43.

Appellee cites the case of *Williams v. United States*, 177 Fed. (2d) 97, 98. A reading of that decision indicates that the questions raised herein and below by appellant are not answered therein.

If appellee's claim to validity of sentences is correct he should be able to cite authority therefor and tie it in with the facts. He has not done so. Nothing is said and no authority cited, either distinguish-

ing or contrariwise, on the express propositions raised by appellant. There is nothing to which to reply.

Dated, San Francisco, California,
September 14, 1951.

Respectfully submitted,
JOSEPH L. BORTIN,
Attorney for Appellant.